

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

Crl.Rev.Pet.No. 4185 of 2007()

M.C. NO. 22/2005 of ASSISTANT SESSIONS COURT, MANJERI.
CRL.A. NO. 99/2006 of SESSIONS COURT, MANJERI.

REVN. PETITIONER: REVN. PETITIONERS/SURETIES

1. CHOLAMUKHATHU KOYA, S/O. MOIDEEN,
THAZHACKODE AMSOM.
2. CHOLAMUKHATHU ABU, S/O. SAIDUTTY,
VALAMKULAM, ANAMANGAD VILLAGE.

BY ADV. SRI.MANSOOR.B.H.

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. C.M. NASAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 23/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

V. RAMKUMAR , J
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CRL.R.P. NO. 4185 OF 2007

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Dated this the 23rd day of November, 2007.

ORDER

The revision petitioners, who were counter petitioners 3 and 4 in M.C. No. 22 of 2005 on the file of Assistant Sessions Court, Manjeri, were the sureties for the 3rd accused in S.C. No. 160 of 2004 before that court. The bond amount was Rs.10,000/-. Consequent on the 3rd accused remaining absent, the Assistant Sessions Court initiated proceedings against the revision petitioners under Section 446 Cr.P.C. Except submitting that the 3rd accused had gone abroad, the revision petitioners were unable to secure his attendance before the court. The trial court thereupon as per order dated 15.02.2006 imposed the bond amount as penalty on each of the revision petitioners. On appeal preferred by them as Crl. Appeal No. 99/2006 before Sessions Court, Manjeri along with the two other sureties of the 2nd accused who was also absconding, the lower appellate court as per judgment dated 17.07.2007 dismissed the appeal so far as it relates to the revision petitioner. Hence this revision.

2. Since the 3rd accused in C.C. No. 160/2004 on the file of the Assistant Sessions Court, Manjeri went abroad, the revision petitioners who are his sureties had incurred the liability to forfeit the Government

a sum of Rs.10,000/- each which they had undertaken to forfeit while executing the bail bond. The 3rd accused now remains to be continuously absconding. Having regard to the fact that the revision petitioners could not anticipate the 3rd accused making himself scarce and going abroad and having regard to the fact that similar circumstance was considered and treated as a mitigating circumstance by the Apex Court in 1994 (4) Crime 320, I am inclined to reduce the penalty by 50% of the bond amount. Accordingly, each of the revision petitioners shall pay a penalty of Rs.5,000/- (Rupees five thousand only) within one month from today. If the penalty amount is ultimately found irrecoverable, the revision petitioners shall suffer imprisonment in civil prison for a period of two months.

The Crl.R.P is disposed of accordingly.

V. RAMKUMAR, JUDGE.

CRL.R.P. NO. 4185/2007

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